

SERVICE DATE – MAY 29, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 565 (Sub-No. 1X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN MIDDLESEX
COUNTY, MASS.

Decided: May 29, 2012

This decision grants an extension of time to negotiate a trail use/rail banking agreement.

By decision and notice of interim trail use or abandonment (NITU) served on October 12, 2001 (October 2001 decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by New York Central Lines, LLC (NYC) of 4.80 miles of railroad known as the Albany Division, Fitchburg Subdivision, between milepost QBS 0.00 at Framingham and milepost QBS 4.80 at South Sudbury, in Middlesex County, Mass., subject to trail use, public use, and standard employee protective conditions.¹

The October 2001 decision included a NITU under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 authorizing a 180-day period for the Town of Sudbury (Sudbury) to negotiate an interim trail use/rail banking agreement with CSXT for a 1.4-mile portion of the line extending north from the Framingham town line to the intersection of the former Penn Central Transportation Company line at milepost QBS 4.80 (Sudbury portion). By decision served on December 12, 2006, a second NITU was issued authorizing a 180-day period for the Town of Framingham (Framingham) to negotiate an interim trail use/rail banking agreement with CSXT for a 3.4-mile portion of the right-of-way between milepost QBS 0.00 at Framingham and milepost QBS 3.40 at the Framingham town line (Framingham portion). By a series of decisions, the NITU negotiating periods were extended for both the Sudbury and Framingham portions of the line, most recently until April 27, 2012.

¹ Certain prior decisions or notices in this proceeding have embraced the related proceeding CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, Mass., Docket No. AB 55 (Sub-No. 593X). CSX Corporation (the parent company of CSX Transportation, Inc. (CSXT)) and Norfolk Southern Corporation jointly acquired control of Conrail Inc. and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail were assigned to NYC, which at the time was a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line authorized for abandonment in this proceeding is included among the property operated by CSXT pursuant to the NYC operating agreement. CSXT is the successor to NYC. See CSX Corp. et al.—Control—Conrail Inc. et al., FD 33388 (Sub-No. 94) (STB served Nov. 7, 2003).

By letter filed on April 20, 2012, Sudbury requests an additional 180-day extension (until October 24, 2012) of the NITU negotiating period for the Sudbury portion of the line.² Sudbury states that CSXT and Sudbury are continuing to seek agreement regarding the acquisition price for interim trail use/rail banking and wish to continue negotiating a purchase and sale agreement. Sudbury further states that it is evaluating the benefits of contracting for an updated appraisal. By letter filed on May 8, 2012, CSXT agrees with the extension request and supports a 180-day extension of the NITU negotiating period for the Sudbury portion of the line until October 24, 2012.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, further extension of the negotiating period is warranted. *See Birt v. STB*, 90 F.3d 580, 588-90 (D.C. Cir. 1996); *Grantwood Vill. v. Mo. Pac. R.R.*, 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period for the Sudbury portion of the line will be extended for an additional 180 days, until October 24, 2012.⁴

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period for the Sudbury portion of the line is granted.
2. The NITU negotiating period for the 1.4-mile portion of the line between milepost QBS 3.40 and milepost QBS 4.80 is extended until October 24, 2012,

² Sudbury states in its extension request that the 1.4-mile portion of the line is between milepost QBS 3.40 and milepost QBS 4.90. In its reply, CSXT states that milepost QBS 4.80 is the correct end point for the Sudbury portion.

³ See *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures*, 4 I.C.C.2d 152, 157-58 (1987).

⁴ Extension of the NITU negotiating period creates a regulatory barrier to consummation of the abandonment. For that reason, if the NITU negotiating period expires without the parties reaching an agreement, CSXT's notice of consummation will be due not later than 60 days thereafter. See 49 C.F.R. § 1152.29(e)(2).

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.